

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

----- X	:	
JONATHAN COHEN, SANDRA FABARA,	:	
STEPHEN EBERT, LUIS LAMBOY,	:	
ESTEBAN DEL VALLE, RODRIGO HENTER DE	:	CIVIL ACTION
REZENDE, DANIELLE MASTRION, WILLIAM	:	NO:
TRAMONTOZZI, JR., THOMAS LUCERO,	:	
AKIKO MIYAKAMI, CHRISTIAN CORTES,	:	
DUSTIN SPAGNOLA, ALICE MIZRACHI,	:	
CARLOS GAME, JAMES ROCCO, STEVEN LEW	:	
and FRANCISCO FERNANDEZ,	:	
	:	
Plaintiffs,	:	
	:	
-against-	:	
	:	
G & M REALTY L.P., 22-50 JACKSON	:	
AVENUE OWNERS, L.P., 22-52 JACKSON	:	
AVENUE, LLC, ACD CITIVIEW BUILDINGS,	:	
LLC and GERALD WOLKOFF,	:	
	:	
Defendants.	:	
----- X		

ORIGINAL

PLAINTIFFS' ORIGINAL COMPLAINT

Plaintiffs Jonathan Cohen, Sandra Fabara, Stephen Ebert, Luis Lamboy, Esteban Del Valle, Rodrigo Henter de Rezende, Danielle Mastrion, William Tramontozzi, Jr., Thomas Lucero, Akiko Miyakami, Christian Cortes, Dustin Spagnola, Alice Mizrachi, Carlos Game, James Rocco, Steven Lew and Francisco Fernandez, for their claims against defendants G & M Realty L.P., 22-50 Jackson Avenue Owners, L.P., 22-52 Jackson Avenue, LLC, ACD Citiview Buildings, LLC and Gerald Wolkoff, respectfully allege as follows on their own knowledge with respect to their own actions, and upon information and belief as to all other allegations:

JURISDICTION AND VENUE

1. This court has jurisdiction over this declaratory judgment action pursuant to 28 U.S.C. §§1331 and 1338(a), in that this action arises under the Visual Artists Rights Act (VARA), 17 U.S.C. §106A, *et seq.*

2. This court also has jurisdiction of the Second and Third claims under the principles of supplemental jurisdiction pursuant to 28 U.S.C. §1367.

3. Venue is proper in this court pursuant to 28 U.S.C. §1391, in that the property that is the subject of this action is situated in this district.

THE PARTIES

4. Plaintiff Jonathan Cohen resides in Flushing, New York, and is a professional artist under the name “Meres One” (“Cohen”). Cohen is the “author of a work of visual art” within the meaning of 17 U.S.C. §106A.

5. Plaintiff Sandra Fabara resides in Astoria, New York, and is a professional artist under the name “Lady Pink” (“Fabara”). Cohen is the “author of a work of visual art” within the meaning of 17 U.S.C. §106A.

6. Plaintiff Stephen Ebert resides in Brooklyn, New York, and is a professional artist under the name “Bishop 203” (“Ebert”). Ebert is the “author of a work of visual art” within the meaning of 17 U.S.C. §106A.

7. Plaintiff Luis Lamboy resides in the Bronx, New York and is a professional artist (“Lamboy”). Lamboy is the “author of a work of visual art” within the meaning of 17 U.S.C. §106A.

8. Plaintiff Esteban Del Valle resides in Brooklyn, New York (“Del Valle”). Del Valle is the “author of a work of visual art” within the meaning of 17 U.S.C. §106A.

9. Plaintiff Rodrigo Henter de Rezende resides in Brooklyn, New York and is a professional artist under the name “AK47” (“AK47”). AK47 is the “author of a work of visual art” within the meaning of 17 U.S.C. §106A.

10. Plaintiff Danielle Mastrion resides in Brooklyn, New York, and is a professional artist (“Mastrion”). Mastrion is the “author of a work of visual art” within the meaning of 17 U.S.C. §106A.

11. Plaintiff William Tramontozzi, Jr. resides in College Point, New York, and is a professional artist (“Tramontozzi”). Tramontozzi is the “author of a work of visual art” within the meaning of 17 U.S.C. §106A.

12. Plaintiff Thomas Lucero resides in Valley Stream, New York, and is a professional artist (“Lucero”). Lucero is the “author of a work of visual art” within the meaning of 17 U.S.C. §106A.

13. Plaintiff Akiko Miyakami resides in Long Island City, New York, and is a professional artist under the name “Shiro” (“Shiro”). Shiro is the “author of a work of visual art” within the meaning of 17 U.S.C. §106A.

14. Plaintiff Christian Cortes resides in Flushing, New York, and is a professional artist (“Cortes”). Cortes is the “author of a work of visual art” within the meaning of 17 U.S.C. §106A.

15. Plaintiff Dustin Spagnola resides in Asheville, North Carolina, and is a professional artist (“Spagnola”). Spagnola is the “author of a work of visual art” within the meaning of 17 U.S.C. §106A.

16. Plaintiff Alice Mizrachi resides at 11-60 Welling Court, Astoria, New York 11102, and is a professional artist (“Mizrachi”). Mizrachi is the “author of a work of visual art” within the meaning of 17 U.S.C. §106A.

17. Plaintiff Carlos Game resides in Rockaway Beach, New York (“Game”). Game is the “author of a work of visual art” within the meaning of 17 U.S.C. §106A.

18. Plaintiff James Rocco resides in Rego Park, New York (“Rocco”). Rocco is the “author of a work of visual art” within the meaning of 17 U.S.C. §106A.

19. Plaintiff Steven Lew resides in Little Neck, New York (“Lew”). Lew is the “author of a work of visual art” within the meaning of 17 U.S.C. §106A.

20. Plaintiff Francisco Fernandez resides in New Windsor, New York (“Fernandez”). Fernandez is the “author of a work of visual art” within the meaning of 17 U.S.C. §106A.

21. Cohen, Fabara, Ebert, Lamboy, Del Valle, AK47, Mastrion, Tramontozzi, Lucero, Shiro, Cortes, Spagnola, Mizrachi, Game, Rocco, Lew and Fernandez are referred to collectively herein as “Plaintiffs.”

22. Defendant G & M Realty L.P. (“G&M Realty”) is a New York limited partnership with an office and principal place of business at 1 Executive Drive, Edgewood, New York 11717.

23. Defendant 22-50 Jackson Avenue Owners L.P. (“Jackson Owners”) is a New York limited partnership with an office and principal place of business at 1 Executive Drive, Edgewood, New York, 11717.

24. Defendant 22-52 Jackson Avenue, LLC (“22-52 Jackson”) is a New York limited liability corporation with an office and principal place of business c/o Alan Hoffman, 85 West Hawthorne Ave., Valley Stream, New York, 11590.

25. Defendant ACD Citiview Buildings, LLC (“Citiview”) is a New York limited liability corporation with an office and principal place of business at 1 Executive Drive, Edgewood, New York, 11717.

26. Defendant Gerald Wolkoff (“Wolkoff”) is an individual with an office and principal place of business at 1 Executive Drive, Edgewood, New York, 11717.

27. G&M Realty, Jackson Owners, 22-52 Jackson, Citiview and Wolkoff are referred to collectively herein as “Defendants”.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

A. The 5Pointz Properties

Queens Block 86, Lot 1

28. Defendant G&M Realty is the owner in fee simple of certain improved real property located at 46-23 Crane Street, 46-09 Crane Street, 45-46 Davis Street, 45-12 Davis Street, 22-42 Jackson Avenue and 22-44 Jackson Avenue, Queens, New York (collectively these addresses comprise Queens Block 86, Lot 1) (“Queens Block 86, Lot 1”).

29. Either G&M Realty or other entities owned or controlled by Wolkoff, have owned Queens Block 86, Lot 1 in fee simple since on or about 1971.

The 46-45 Crane Street Lot

30. Defendant G&M Realty is the owner in fee simple of certain improved real property located at 46-45 Crane Street, Queens, New York (“Queens Block 86, Lot 22”).

31. Either G&M Realty or other entities owned or controlled by Wolkoff, have owned Queens Block 86, Lot 22 in fee simple since on or about 1971.

The 22-50 Jackson Avenue Lot

32. Defendant Jackson Owners is the owner in fee simple of certain improved real property located at 22-50 Jackson Avenue, Queens, New York (“Queens Block 86, Lot 6”).

33. Either Jackson Owners or other entities owned or controlled by Wolkoff, have owned Queens Block 86, Lot 6 in fee simple since on or about 2005.

The 22-48 Jackson Avenue Lot

34. Defendant Jackson Owners is the owner in fee simple of certain improved real property located at 22-48 Jackson Avenue, Queens, New York (“Queens Block 86, Lot 7”).

35. Either Jackson Owners or other entities owned or controlled by Wolkoff, have owned Queens Block 86, Lot 7 in fee simple since on or about 2001.

The 22-52 Jackson Avenue Lot

36. Defendant 22-52 Jackson is the owner in fee simple of certain improved real property located at 22-52 Jackson Avenue a/k/a 45-06 Davis Street, Queens, New York (“Queens Block 86, Lot 8”).

37. Defendant Citiview is currently holding itself out as the owner in fee simple of Queens Block 86, Lot 8 in various eviction actions pending in New York State Civil Court.

38. 22-52 Jackson, Citiview or other entities owned or controlled by Wolkoff, have owned Queens Block 86, Lot 8 in fee simple since on or about 2004.

39. Queens Block 86, Lots 1, 6, 7, 8 and 22, inclusive, are referred to collectively herein as “5Pointz”.

B. 5Pointz As The Mecca Of The Aerosol Art World

40. Since approximately 1993, Wolkoff has permitted aerosol artists to use the interior and exterior walls of 5Pointz for works of visual art.

41. Cohen is an artist by training who has painted hundreds of commissioned aerosol art pieces throughout the East Coast and in Europe.

42. In or around 2002, Wolkoff and Cohen agreed that Cohen would take over as the volunteer curator/registrar/director/manager of the aerosol art program at 5Pointz.

43. Wolkoff gave Cohen keys to 5Pointz and provided several secure spaces in 5Pointz for Cohen to use as an office and to store cans of spray paint, ladders and other painting supplies for Cohen and other artists.

44. Wolkoff gave Cohen full authority to determine what works of visual art could be painted on 5Pointz, with three restrictions: a) the works of visual art were not to be political; b) they were to contain nothing religious; and c) no pornography was allowed.

45. Wolkoff directed Cohen to have works of visual art painted on every 5Pointz building.

46. Wolkoff did not request or require that title to the works of visual art be transferred to him.

47. Each individual artist, or group of artists, retained all copyrights to his, her or their works of visual art.

48. None of the artists who have painted works of visual art on or at 5Pointz was paid for his or her time or work.

49. Since Cohen became curator at 5Pointz, no artist has been allowed to put a work of visual art on or at 5Pointz without Cohen's express permission.

50. Cohen will only allow new or unknown aerosol artists to place works of visual art on or at 5Pointz after they provide a portfolio of their work and he approves their proposed piece to ensure that the proposed visual art meets the requirements imposed by Wolkoff.

51. Even established aerosol artists must provide proposed layouts of their proposed works of visual art so that Cohen can determine where to place the works of art on or at 5Pointz.

52. Some of the larger, more elaborate works of visual art on 5Pointz have taken weeks or months to create.

53. Since 2002, the works of visual art on 5Pointz have become one of the foremost collections of aerosol art in the United States, and have resulted in 5Pointz being referred to as world's "Graffiti Mecca." A tiny fraction of the media pieces on the works of visual art on or at 5Pointz (out of nearly 500,000 Google hits on "5 Pointz" or "5Pointz") are attached at Exhibit A and incorporated herein by reference.

54. The non-profit corporation formed by Cohen, 5 Pointz Aerosol Arts Center, Inc., maintains a website, 5ptz.com, which showcases the works of visual art on or at 5Pointz and publicizes the free community events sponsored by 5Pointz.

55. Because of its stature in the international art community and its high visibility, having a work of visual art accepted and displayed on 5Pointz adds considerable prestige to an artist's reputation.

56. For aspiring aerosol artists, having a work of visual art accepted and displayed on 5Pointz is guaranteed to raise their profile and enhance their credibility in the art world.

57. Aerosol artists have traveled from as far away as Kazakhstan, Australia, Japan and Brazil for the opportunity to paint their works of visual art on 5Pointz.

58. 5Pointz is listed in every major guidebook covering New York City, and is included in over 100 international travel guides as well.

59. In any given week, hundreds of tourists from all around the world visit 5Pointz to see the works of visual art displayed there.

60. As the Christian Science Monitor observed, many patrons of MoMA's P.S.1, located across the street from 5Pointz, are "inexorably drawn" to cross the street and view 5Pointz as well.

61. Thousands of New York City subway passengers also view 5Pointz every day from the Number 7 subway train that passes close by the building.

62. In addition, Cohen conducts over 100 formal school tours of 5Pointz every year for groups ranging from university students – including Parsons School of Design – to children as young as seven.

63. Over the last two decades, 5Pointz has become a Long Island City landmark, and has been featured in countless films, television programs, music videos and commercial photo shoots.

64. For instance, fashion designer Donna Karan used photographic murals depicting 5Pointz on the walls of her Madison Avenue, New York City store to serve as the backdrop for her Spring/Summer 2013 Collection.

65. Grammy Award-winning musician Joss Stone filmed the music video for her song “Tell Me ‘Bout It” at 5Pointz, and flew Cohen to Los Angeles to do the body paint work for the cover of her album “Introducing Joss Stone.”

C. The Works of Visual Art at 5Pointz

66. 5Pointz currently has over 350 works of visual art on its exterior and interior walls.

Cohen’s Works of Visual Art at 5Pointz

67. Cohen’s works of visual art are works of recognized stature. He has exhibited in numerous galleries and shows, and has been the subject of innumerable news articles and television interviews. Cohen’s biography and examples of representative news articles are attached at Exhibit B and incorporated herein by reference.

68. Cohen personally has over 100 works of visual art on the exterior and interior walls of 5Pointz.

69. Cohen’s works of visual art on or at 5Pointz include this piece titled “Drunken Bulbs”:



70. Cohen’s copyright registration for “Drunken Bulbs” is pending before the United States Copyright Office.

71. “Drunken Bulbs” has been incorporated in and made part of 5Pointz in such a way that removing it, or any part thereof, from 5Pointz would cause its destruction, distortion, mutilation or modification.

72. Cohen’s works of visual art or at 5Pointz include this joint work with the artist “TooFly”, titled “Love Girl and Burner:”



73. Cohen’s copyright registration for “Love Girl and Burner” is pending before the United States Copyright Office.

74. “Love Girl and Burner” has been incorporated in and made part of 5Pointz in such a way that removing it, or any part thereof, from 5Pointz would cause its destruction, distortion, mutilation or modification.

75. Cohen's works of visual art on or at 5Pointz include this joint work with Shiro, titled "Underwater Fantasy:"



76. Cohen's copyright registration for "Underwater Fantasy" is pending before the United States Copyright Office.

77. "Underwater Fantasy" has been incorporated in and made part of 5Pointz in such a way that removing it, or any part thereof, from 5Pointz would cause its destruction, distortion, mutilation or modification.

78. Cohen's works of visual art on or at 5Pointz include this tribute to his murdered aunt, titled "Eleanor RIP":



79. Cohen's copyright registration for "Eleanor RIP" is pending before the United States Copyright Office.

80. “Eleanor RIP” has been incorporated in and made part of 5Pointz in such a way that removing it, or any part thereof, from 5Pointz would cause its destruction, distortion, mutilation or modification.

81. Cohen’s works of visual art on or at 5Pointz include this oversize piece created on four surfaces, titled “7 Angle Time Lapse”:



82. Cohen’s copyright registration for “7 Angle Time Lapse” is pending before the United States Copyright Office.

83. “7 Angle Time Lapse” has been incorporated in and made part of 5Pointz in such a way that removing it, or any part thereof, from 5Pointz would cause its destruction, distortion, mutilation or modification.

84. Many of Cohen’s other works of visual art on or at 5Pointz feature dozens of his copyrighted light bulb, including these:



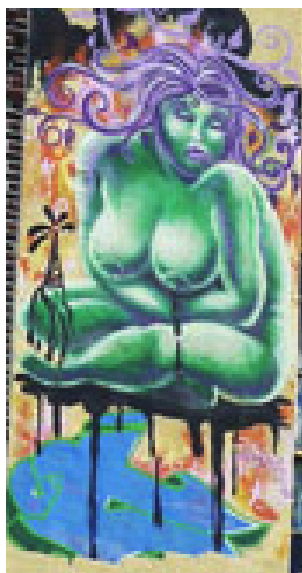
85. Cohen’s copyrighted light bulbs have been incorporated in and made part of 5Pointz in such a way that removing it, or any part thereof, from 5Pointz would cause their destruction, distortion, mutilation or modification.

86. Cohen has not executed or signed a written instrument that specifies that installation of “Drunken Bulbs”, “Love Girl and Burner”, “Underwater Fantasy”, “Eleanor RIP”, “5POINTZ” and/or his copyrighted light bulb works of visual art on or at 5Pointz may subject any of those works of visual art to destruction, distortion, mutilation, or other modification, by reason of its removal.

Fabara’s Work of Visual Art at 5Pointz

87. Fabara’s works of visual art are works of recognized stature. She has exhibited in numerous galleries and shows worldwide, and had her first solo show when she was only 21. Fabara is frequently written about in the press. Fabara’s biography is attached at Exhibit C and incorporated herein by reference.

88. Fabara has a work of visual art on or at 5Pointz titled “Green Mother Earth”:



89. Fabara’s copyright registration for “Green Mother Earth” is pending before the United States Copyright Office.

90. “Green Mother Earth” has been incorporated in and made part of 5Pointz in such a way that removing it, or any part thereof, from 5Pointz would cause its destruction, distortion, mutilation or modification.

91. Fabara has not executed or signed a written instrument that specifies that installation of “Green Mother Earth” on or at 5Pointz may subject that work of visual art to destruction, distortion, mutilation, or other modification, by reason of its removal.

Ebert’s Work of Visual Art at 5Pointz

92. Ebert’s works of visual art are works of recognized stature. He has exhibited in numerous galleries and shows, and is frequently written about in the press. Ebert’s biography is attached at Exhibit D and incorporated herein by reference.

93. Ebert has a work of visual art on or at 5Pointz titled “Heartless Bangle”:



94. Ebert’s copyright registration for “Heartless Bangle” is pending before the United States Copyright Office.

95. “Heartless Bangle” has been incorporated in and made part of 5Pointz in such a way that removing it, or any part thereof, from 5Pointz would cause its destruction, distortion, mutilation or modification.

96. Ebert has not executed or signed a written instrument that specifies that installation of “Heartless Bangle” on or at 5Pointz may subject that work of visual art to destruction, distortion, mutilation, or other modification, by reason of its removal.

Lamboy’s Work of Visual Art at 5Pointz

97. Lamboy’s works of visual art are works of recognized stature. He has exhibited in numerous galleries and shows worldwide, and his works of visual art are highly sought after by collectors. Lamboy is frequently written about in the press. Lamboy’s biography is attached at Exhibit E and incorporated herein by reference.

98. Lamboy has a work of visual art on or at 5Pointz titled “Blue Jay Wall”:



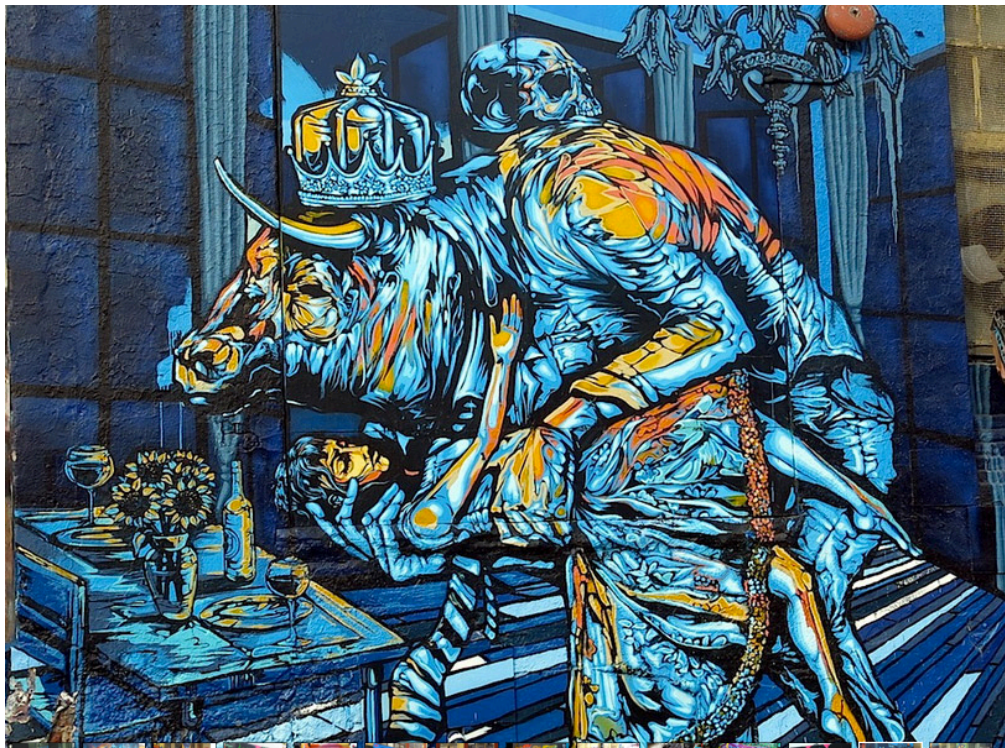
99. “Blue Jay Wall” has been incorporated in and made part of 5Pointz in such a way that removing it, or any part thereof, from 5Pointz would cause its destruction, distortion, mutilation or modification.

100. Lamboy has not executed or signed a written instrument that specifies that installation of “Blue Jay Wall” on or at 5Pointz may subject that work of visual art to destruction, distortion, mutilation, or other modification, by reason of its removal.

Del Valle’s Work of Visual Art at 5Pointz

101. Del Valle’s works of visual art are works of recognized stature. He has exhibited in numerous galleries and shows across the United States, and is frequently written about in the press. Del Valle’s biography is attached at Exhibit F and incorporated herein by reference.

102. Del Valle has a work of visual art on or at 5Pointz titled “Beauty and the Beast”:



103. Del Valle’s copyright registration for “Beauty and the Beast” is pending before the United States Copyright Office.

104. “Beauty and the Beast” has been incorporated in and made part of 5Pointz in such a way that removing it, or any part thereof, from 5Pointz would cause its destruction, distortion, mutilation or modification.

105. Del Valle has not executed or signed a written instrument that specifies that installation of “Beauty and the Beast” on or at 5Pointz may subject that work of visual art to destruction, distortion, mutilation, or other modification, by reason of its removal.

AK47’s Work of Visual Art at 5Pointz

106. AK47’s works of visual art are works of recognized stature. He has exhibited in numerous galleries and shows worldwide, and is frequently written about in the press. AK47’s biography is attached at Exhibit G and incorporated herein by reference.

107. AK47 has a work of visual art on or at 5Pointz titled “Fighting Tree”:



108. AK47's copyright registration for "Fighting Tree" is pending before the United States Copyright Office.

109. "Fighting Tree" has been incorporated in and made part of 5Pointz in such a way that removing it, or any part thereof, from 5Pointz would cause its destruction, distortion, mutilation or modification.

110. AK47 has not executed or signed a written instrument that specifies that installation of "Fighting Tree" on or at 5Pointz may subject that work of visual art to destruction, distortion, mutilation, or other modification, by reason of its removal.

Mastrion's Work of Visual Art at 5Pointz

111. Mastrion's works of visual art are works of recognized stature. She has painted and exhibited in numerous galleries and shows worldwide, and is frequently written about in the press. Mastrion's biography is attached at Exhibit H and incorporated herein by reference.

112. Mastrion has a work of visual art on or at 5Pointz titled "Kool Herc Portrait":



113. Mastrion’s copyright registration for “Kool Herc Portrait” is pending before the United States Copyright Office.

114. “Kool Herc Portrait” has been incorporated in and made part of 5Pointz in such a way that removing it, or any part thereof, from 5Pointz would cause its destruction, distortion, mutilation or modification.

115. Mastrion has not executed or signed a written instrument that specifies that installation of “Kool Herc Portrait” on or at 5Pointz may subject that work of visual art to destruction, distortion, mutilation, or other modification, by reason of its removal.

Tramontozzi’s Work of Visual Art at 5Pointz

116. Tramontozzi’s works of visual art are works of recognized stature. He has works of visual art in every graffiti hall of fame in the United States and abroad, and has been featured in several aerosol arts magazines. Tramontozzi’s biography is attached at Exhibit I and incorporated herein by reference.

117. Tramontozzi has a joint work of visual art on or at 5Pointz titled “Jimi Hendrix Tribute”, which he painted in collaboration with Rocco:



118. “Jimi Hendrix Tribute” has been incorporated in and made part of 5Pointz in such a way that removing it, or any part thereof, from 5Pointz would cause its destruction, distortion, mutilation or modification.

119. Tramontozzi has not executed or signed a written instrument that specifies that installation of “Jimi Hendrix Tribute” on or at 5Pointz may subject that work of visual art to destruction, distortion, mutilation, or other modification, by reason of its removal.

Lucero’s Work of Visual Art at 5Pointz

120. Lucero’s works of visual art are works of recognized stature. He has exhibited in numerous galleries and shows across the United States and has dozens of corporate and entertainment clients. Lucero is frequently written about in the press. His biography is attached at Exhibit J and incorporated herein by reference.

121. Lucero has a work of visual art on or at 5Pointz titled “Black Creature”:



122. Lucero’s copyright registration for “Black Creature” is pending before the United States Copyright Office.

123. “Black Creature” has been incorporated in and made part of 5Pointz in such a way that removing it, or any part thereof, from 5Pointz would cause its destruction, distortion, mutilation or modification.

124. Lucero has not executed or signed a written instrument that specifies that installation of “Black Creature” on or at 5Pointz may subject that work of visual art to destruction, distortion, mutilation, or other modification, by reason of its removal.

Shiro’s Works of Visual Art at 5Pointz

125. Shiro’s works of visual art are works of recognized stature. She has exhibited in numerous galleries and shows, and has participated in large-scale aerosol art projects around the globe. Shiro is frequently written about in the press. Shiro’s biography is attached at Exhibit K and incorporated herein by reference.

126. Shiro has a work of visual art on or at 5Pointz titled “Japanese Irish Girl”:



127. Shiro's copyright registration for "Japanese Irish Girl" is pending before the United States Copyright Office.

128. "Japanese Irish Girl" has been incorporated in and made part of 5Pointz in such a way that removing it, or any part thereof, from 5Pointz would cause its destruction, distortion, mutilation or modification.

129. Shiro has a work of visual art on or at 5Pointz titled "Manga Koi":



130. Shiro's copyright registration for "Manga Koi" is pending before the United States Copyright Office.

131. "Manga Koi" has been incorporated in and made part of 5Pointz in such a way that removing it, or any part thereof, from 5Pointz would cause its destruction, distortion, mutilation or modification.

132. Shiro's works of visual art on or at 5Pointz include this joint work with Game, titled "Japanese Fantasy:"



133. Shiro's copyright registration for "Japanese Fantasy" is pending before the United States Copyright Office.

134. "Japanese Fantasy" has been incorporated in and made part of 5Pointz in such a way that removing it, or any part thereof, from 5Pointz would cause its destruction, distortion, mutilation or modification.

135. Shiro's works of visual art on or at 5Pointz include this joint work with Cohen, titled "Underwater Fantasy:"



136. Shiro's copyright registration for "Underwater Fantasy" is pending before the United States Copyright Office.

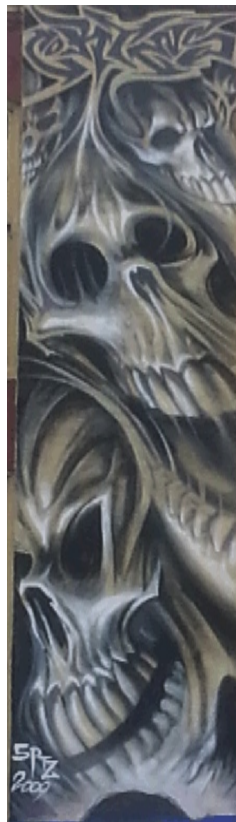
137. “Underwater Fantasy” has been incorporated in and made part of 5Pointz in such a way that removing it, or any part thereof, from 5Pointz would cause its destruction, distortion, mutilation or modification.

138. Shiro has not executed or signed a written instrument that specifies that installation of “Japanese Irish Girl” and/or “Manga Koi” and/or “Japanese Fantasy” and/or “Underwater Fantasy” on or at 5Pointz may subject any of those works of visual art to destruction, distortion, mutilation, or other modification, by reason of its removal.

Cortes’ Work of Visual Art at 5Pointz

139. Cortes’ works of visual art are works of recognized stature. He has exhibited in galleries and shows, and is frequently written about in the press. Cortes’ biography is attached at Exhibit L and incorporated herein by reference.

140. Cortes has a work of visual art on or at 5Pointz titled “Skulls Cluster”:



141. Cortes' copyright registration for "Skulls Cluster" is pending before the United States Copyright Office.

142. "Skulls Cluster" has been incorporated in and made part of 5Pointz in such a way that removing it, or any part thereof, from 5Pointz would cause its destruction, distortion, mutilation or modification.

143. Cortes has not executed or signed a written instrument that specifies that installation of "Skulls Cluster" on or at 5Pointz may subject that work of visual art to destruction, distortion, mutilation, or other modification, by reason of its removal.

Spagnola's Work of Visual Art at 5Pointz

144. Spagnola's works of visual art are works of recognized stature. He has exhibited in numerous galleries and shows across the United States, and is frequently written about in the press. Spagnola's biography is attached at Exhibit M and incorporated herein by reference.

145. Spagnola has a work of visual art on or at 5Pointz titled "Tiger":



146. Spagnola’s copyright registration for “Tiger” is pending before the United States Copyright Office.

147. “Tiger” has been incorporated in and made part of 5Pointz in such a way that removing it, or any part thereof, from 5Pointz would cause its destruction, distortion, mutilation or modification.

148. Spagnola has not executed or signed a written instrument that specifies that installation of “Tiger” on or at 5Pointz may subject that work of visual art to destruction, distortion, mutilation, or other modification, by reason of its removal.

Mizrachi’s Work of Visual Art at 5Pointz

149. Mizrachi’s works of visual art are works of recognized stature. She has exhibited in numerous galleries and shows across the country, and featured in the press worldwide. Mizrachi’s biography is attached at Exhibit N and incorporated herein by reference.

150. Mizrachi has a work of visual art on or at 5Pointz titled “Cube Girl”:



151. Mizrachi's copyright registration for "Cube Girl" is pending before the United States Copyright Office.

152. "Cube Girl" has been incorporated in and made part of 5Pointz in such a way that removing it, or any part thereof, from 5Pointz would cause its destruction, distortion, mutilation or modification.

153. Mizrachi has not executed or signed a written instrument that specifies that installation of "Cube Girl" on or at 5Pointz may subject that work of visual art to destruction, distortion, mutilation, or other modification, by reason of its removal.

Game's Works of Visual Art at 5Pointz

154. Game's works of visual art are works of recognized stature. He has exhibited in many venues across the United States, and his works are highly prized by private collectors. Game's biography is attached at Exhibit O and incorporated herein by reference.

155. Game has a work of visual art on or at 5Pointz titled "Japanese Fantasy," which he created jointly with Shiro:



156. Game’s copyright registration for “Japanese Fantasy” is pending before the United States Copyright Office.

157. Game has a work of visual art on or at 5Pointz titled “Geisha”:



158. Game’s copyright registration for “Geisha” is pending before the United States Copyright Office.

159. “Japanese Fantasy” and “Geisha” have been incorporated in and made part of 5Pointz in such a way that removing it, or any part thereof, from 5Pointz would cause their destruction, distortion, mutilation or modification.

160. Game has not executed or signed a written instrument that specifies that installation of “Japanese Fantasy” and/or “Black and White Fantasy” on or at 5Pointz may subject either of those works of visual art to destruction, distortion, mutilation, or other modification, by reason of its removal.

Rocco's Works of Visual Art at 5Pointz

161. Rocco's works of visual art are works of recognized stature. He has exhibited in many galleries and exhibits in the United States. Rocco's biography is attached at Exhibit P and incorporated herein by reference.

162. Rocco has a work of visual art on or at 5Pointz titled "Bull Face":



163. Rocco's copyright registration for "Bull Face" is pending before the United States Copyright Office.

164. Rocco has a work of visual art on or at 5Pointz titled "Jimi Hendrix Tribute," which he created jointly with Tramontozzi:



165. Rocco's copyright registration for "Jimi Hendrix Tribute" is pending before the United States Copyright Office.

166. "Bull Face" and "Jimi Hendrix Tribute" have been incorporated in and made part of 5Pointz in such a way that removing it, or any part thereof, from 5Pointz would cause its destruction, distortion, mutilation or modification.

167. Rocco has not executed or signed a written instrument that specifies that installation of "Bull Face" and/or "Jimi Hendrix Tribute" on or at 5Pointz may subject either of those works of visual art to destruction, distortion, mutilation, or other modification, by reason of its removal.

Lew's Work of Visual Art at 5Pointz

168. Lew's works of visual art are works of recognized stature. His work can be found in galleries and exhibitions across the country. Lew's biography is attached at Exhibit Q and incorporated herein by reference.

169. Lew has a work of visual art on or at 5Pointz titled "Crazy Monsters":



170. “Crazy Monsters” has been incorporated in and made part of 5Pointz in such a way that removing it, or any part thereof, from 5Pointz would cause its destruction, distortion, mutilation or modification.

171. Lew has not executed or signed a written instrument that specifies that installation of “Crazy Monsters” on or at 5Pointz may subject that work of visual art to destruction, distortion, mutilation, or other modification, by reason of its removal.

Fernandez’s Work of Visual Art at 5Pointz

172. Fernandez’s works of visual art are works of recognized stature. His work can be found in galleries and exhibitions in North and South America. Lew’s biography is attached at Exhibit R and incorporated herein by reference.

173. Fernandez has a work of visual art on or at 5Pointz titled “Dream of Oil”:



174. “Dream of Oil” has been incorporated in and made part of 5Pointz in such a way that removing it, or any part thereof, from 5Pointz would cause its destruction, distortion, mutilation or modification.

175. Fernandez has not executed or signed a written instrument that specifies that installation of “Dream of Oil” on or at 5Pointz may subject that work of visual art to destruction, distortion, mutilation, or other modification, by reason of its removal.

D. Wolkoff's Intention To Demolish 5Pointz

176. Wolkoff has announced plans to demolish 5Pointz later this year to make way for a 1,000-unit luxury residential apartment development.

177. G&M Realty brought an action in New York Civil Court, Queens County to evict Cohen from one of the multiple 5Pointz spaces that Wolkoff gave him permission to use.

178. G&M Realty and Cohen agreed that Cohen would vacate the office space – and only the office space – on or before November 30, 2013.

179. For the time being, Cohen continues to have access to the other 5Pointz spaces provided by Wolkoff.

E. Disabling Sprinklers

180. Defendants, or their agents or representatives, have begun disconnecting and/or disabling New York City Fire Department equipment, and were cited recently cited for a) failure to maintain sprinkler control valves “open” with FDNY seal; b) failure to seal standpipe risers valve “open” with approved seals; and c) failure to maintain records for standpipe/sprinkler system, which actions expose 5Pointz and Plaintiffs’ works of visual art to an extraordinary risk of a catastrophic fire that would distort, mutilate, modify and/or destroy them.

181. Defendants, or their agents or representatives, have also disconnected and removed gas heaters in 5Pointz recently, without securing necessary permits required pursuant to New York City Code Title 28 Fuel Gas Code §105.2, further increasing the likelihood of a catastrophic fire.

182. Defendants, or their agents or representatives, have neglected to replace broken locks on 5Pointz doors, thereby increasing the risk of fires started by trespassers, vandals or others.

FIRST CLAIM
(Visual Artists Rights Act on Behalf of All Plaintiffs)

183. Plaintiffs re-allege paragraphs 1 through 182 as if fully set forth herein.

184. Plaintiffs' pieces, paintings and murals on or at 5Pointz are each a "work of visual art" within the meaning of 17 U.S.C. §101, and constitute copyrightable subject matter.

185. Plaintiffs' honor and reputation as artists will be damaged if Defendants act on their stated intentions to raze 5Pointz.

186. Plaintiffs' works of visual art have received wide public acclaim and approval.

187. Plaintiffs will be irreparably harmed if their works of visual art are distorted, mutilated, modified or destroyed without their consent.

188. Any intentional distortion, mutilation, modification or destruction of Plaintiffs' works of visual art would be prejudicial to Plaintiffs' honor and reputation.

189. Plaintiffs' works of visual art on 5Pointz are works of recognized stature.

190. Plaintiffs' works of visual art have been incorporated in and made part of 5Pointz in such a way that removing the works of visual art, or any part thereof, from 5Pointz would cause their destruction, distortion, mutilation or modification.

191. None of the Plaintiffs has executed or signed a written instrument that specifies that installation of any of their individual works of visual art on or at 5Pointz may

subject those works to destruction, distortion, mutilation, or other modification, by reason of their removal.

192. Pursuant to 17 U.S.C. §106A(d)(3), each of the Plaintiffs has the right to prevent such destruction, distortion, mutilation or modification of his or her works of visual art for a term consisting of the duration of his or her life.

193. Plaintiffs have no adequate remedy at law.

SECOND CLAIM
(Interference With Prospective Contractual Relations
on Behalf of All Plaintiffs)

194. Plaintiffs re-allege paragraphs 1 through 193 as if fully set forth herein.

195. Plaintiffs are the sole and exclusive holder of the copyrights in and to the works of visual art each of them has painted on or at 5Pointz.

196. Defendants' planned demolition of 5Pointz will willfully and maliciously deny access to 5Pointz to Plaintiffs and Plaintiffs' invitees.

197. Defendants' planned demolition of 5Pointz will also intentionally and improperly destroy Plaintiff's works of visual art, thereby preventing Plaintiffs from entering into or continuing contractual relations to exploit said works of visual art, from licensing their works of visual art, and preventing them from granting third parties permission to copy and reproduce Plaintiffs' works of visual art.

198. Plaintiffs are approached on a regular basis by third parties who desire to photograph or film their individual works of visual art for commercial purposes, but Plaintiffs will be unable to grant permission once 5Pointz is demolished.

199. Plaintiffs have been and will be damaged at an amount to be determined at trial.

THIRD CLAIM
(Interference With Cohen's Easement)

200. Plaintiffs re-allege paragraphs 1 through 199 as if fully set forth herein.

201. On or about 2002, Wolkoff granted Cohen an easement in gross on 5Pointz.

202. Said easement gives Cohen the right to occupy certain portions of 5Pointz, and to install works of visual art by Cohen in, on and around 5Pointz, and to oversee the installation of works of visual art by other artists in, on and around 5Pointz.

203. Cohen has occupied 5Pointz pursuant to said easement continuously since then.

204. Said easement is an open and notorious use of 5Pointz for the specific purposes of the installation of works of visual art by Cohen and other artists.

205. The creation of said easement was within Wolkoff's authority as owner, shareholder, member, officer and/or principal of G&M Realty, 22-52 Jackson, Jackson Owners, Citiview, and their predecessors-in-interest and successors-in-interest.

206. Cohen's easement is valid and enforceable against Defendants, and Defendants may not interfere with the easement.

207. Cohen has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court enter judgment in their favor and against Defendants as follows:

1. On their First Claim:
 - a. granting a preliminary and permanent injunction barring Defendants, their agents, attorneys and employees and all those acting in concert with them, from taking any action to alter, deface, modify, mutilate or destroy Plaintiffs' works of visual art at 5Pointz; and
 - b. granting a preliminary and permanent injunction barring Defendants, their agents, attorneys and employees and all those acting in concert with them, from taking any action to disconnect, destroy, modify, turn off, unseal, impair or otherwise interfere with any New York City Fire Department equipment or valves without the necessary FDNY permits, or to disconnect, destroy, modify, turn off, unseal, impair or otherwise interfere with any 5Pointz standpipes, sprinklers or any other fire-fighting or fire-prevention equipment at 5Pointz without the necessary FDNY permits; and
 - c. declaring that Plaintiffs have the right pursuant to 17 U.S.C. §106A(d)(3) to prevent any intentional destruction, distortion, mutilation, or other modification of each of their individual works of visual art at 5Pointz for a period consisting of their individual lifetimes; and

4. On their Second Claim:
 - a. declaring that Plaintiffs have the right to exploit their copyrights in and to their works of visual art in and on 5Pointz; and
 - b. granting a preliminary and permanent injunction barring Defendants, their agents, attorneys and employees and all those acting in concert with them from interfering with Plaintiffs' ability to exploit their individual works of visual art in and on 5Pointz by destroying said works of visual art and/or by denying Plaintiffs and/or their licensees access thereto; and
 - c. granting Plaintiffs' compensatory damages in an amount to be determined by the Court; and
3. On their Third Claim:
 - a. a preliminary and permanent injunction against Defendants preventing them from interfering with Cohen's easement rights; and
 - b. declaring that Cohen has a valid easement over and in 5Pointz for a period consisting of his lifetime; and
5. On all claims, awarding Plaintiffs' their costs and expenses, including attorneys' fees, to the full extent allowed by law, including under the Copyright Act and VARA 17 U.S.C. §§101, *et seq.*; and

6. Entering such other and further relief as the Court deems just, proper and equitable under the circumstances.

Dated: October 8, 2013

/S/

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